Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Amendment of Part 90 of the	)	**PR Docket No. 93-144**
Future Development of SMR	)	**RM 8117, RM-8030**
Systems in the 800 MHz	)	**RM-8029**
Frequency Band	)	
and		
Implementation of Section	)	
309(j) of the Communications	)	**PP Docket No. 93-253**
Act- Competitive Bidding	)	
800 MHz SMR	)	

COMMENTS OF PITTENCRIEFF COMMUNICATIONS, INC.

Pittencrieff Communications, Inc.

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Dated: January 5, 1995

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SUMMARY

Pittencrieff Communications, Inc. ("PCI"), a leading provider of Specialized Mobile Radio ("SMR") service in the United States, hereby submits its Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") in PR Docket No. 93-144. In this proceeding, the Federal Communications Commission proposes a new framework for licensing SMR systems in the 800 MHz band.

PCI believes that the lower 800 MHz SMR channels, as well as the 150 channels now designated for General Category use, should be available for SMR systems and that the rules governing these channels should remain essentially as they are today. PCI supports the Commission's proposal to allocate 10 MHz of spectrum for Major Trading Area ("MTA") based licensing in 2.5 MHz blocks, but suggests that no more than 7.5 MHz of spectrum be initially controlled by one entity. PCI also supports the continuation of site specific licensing for all local SMR systems and urges the Commission to strengthen the co-channel interference criteria.

PCI believes that the establishment of MTA based licensee rights must not come at the expense of incumbent licensees. Incumbent licensees should not be required to relocate and should not be obligated, when assigning their authorizations, to deal only with the MTA licensees. Moreover, MTA licensees must be required to observe at least the 40/22 dBu co-channel separation standard with respect to incumbent co-channel licensees.

PCI supports a one year construction deadline for local SMR systems and a requirement for licensees to begin serving customers by the end of their construction period. MTA licensees should also be held to strict construction requirements.

Finally, PCI believes there should be no presumption that all SMR providers are commercial mobile radio service ("CMRS") providers as SMR services are not substantially similar to other CMRS services. Thus, the regulatory structure for SMR systems should not be the same as the structure applied to other CMRS providers.

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COMMENTS OF PITTENCRIEFF COMMUNICATIONS, INC.

Pittencrieff Communications, Inc. ("PCI" or the "Company"), by its attorneys and pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Comments in response to the Further Notice of Proposed Rule Making in the above referenced proceeding[1] in which the FCC plans to implement a new framework for licensing Specialized Mobile Radio ("SMR") systems in the 800 MHz band.

I. INTRODUCTION

PCI is a leading provider of SMR service in the United States with approximately 38,000 subscriber units in service. The Company serves SMR users on approximately

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[1] Further Notice of Proposed Rule Making ("Further Notice"), FCC Docket No. 93-144, Released November 4, 1994 (FCC 94-271). The deadline for the submission of Comments and Reply Comments in this proceeding was extended to January 5, and January 20, respectively. See, Order, P.R. Docket No. 93-144, DA 94-1326 (released November 28, 1994).

2,700 SMR channels providing coverage in Texas, New Mexico, Oklahoma, Arizona, Colorado and Utah. The Company's SMR footprint currently contains a population of over 20 million people. The Company intends to expand its capacity by constructing a network of SMR channels employing digital technology. It submitted applications and associated rule waiver requests proposing wide area, digital SMR systems in Dallas-Fort Worth, San Antonio-Austin, El Paso, Midland-Odessa, South Texas, Laredo, Albuquerque-Santa Fe, Oklahoma City, Tulsa, Houston, and southwest North Dakota. It currently intends, pending regulatory approval and equipment availability, to begin construction of its first wide area digital system in El Paso, during the second quarter of this year.

In this proceeding, the FCC proposes new rules for assignment of blocks of SMR spectrum in defined market-based service areas designed to facilitate the development of wide-area, multi-channel SMR systems that are comparable to and would compete with other mobile communications services, such as cellular and broadband personal communications services ("PCS"). The Commission would also designate a portion of the 800 MHz band for licensing on a local, station by station basis to accommodate the needs of smaller SMR systems that primarily seek to provide local service. The Further Notice also proposes new application and licensing procedures for both the wide area SMR spectrum blocks and locally licensed SMR channels, including competitive bidding procedures for resolution of mutually exclusive applications. Finally, the Further Notice examines whether the FCC should continue to license SMR systems on

800 MHz General Category channels or on other non-SMR channels through inter-category sharing.

PCI recognizes that the regulatory structure that previously governed the SMR industry may have impeded growth. In fact, the Petition for Rule Making submitted by its wholly owned subsidiary, A&B Electronics, was, in part, the impetus for the initiation of this proceeding. However, many of those regulatory burdens were relieved by the Commission when it adopted the Third Report and Order in the Docket No. 93-252 proceeding.[2] There, the Commission eliminated the impediments to growth imposed by loading requirements and the so-called "forty mile rule".

Here, the Commission attempts to adopt rules for an industry as if that industry did not exist today. The opposite is true. The SMR industry is mature. It has evolved to the point where some operators, such as Nextel Communications, Inc. ("Nextel") and PCI , have chosen to, and are able to offer a service that is expected to be competitive with that offered by cellular and PCS providers. Other operators have elected to continue to provide service that is essentially local in nature, and similar to the service envisioned by the FCC when it initially licensed SMR systems.

The FCC's proposals do not adequately preserve, however, the ability of all SMR providers to offer the type of service they choose. Instead, the FCC seeks to impose artificial guidelines on a mature industry. Those, like PCI, who may choose to offer wide area service in some areas may do so under today's licensing scheme, or with

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[2] Implementation of Sections (n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, FCC 94-212, released September 23, 1994 ("Third Report and Order").

minor modifications to streamline the application process. Those operators that choose to offer local service can also continue to thrive under the current regulatory structure. However, both categories of licensees will be compromised in their ability to accomplish their business objectives, if the FCC overlays the proposed regulatory structure on the existing landscape. PCI is one of what is becoming a limited universe of independent potential providers of wide area SMR service. The Commission should not believe that the wide area SMR industry speaks with one voice with respect to issues presented in this proceeding. Because PCI will be significantly affected by the FCC's proposals, it is pleased to have this opportunity to submit the following comments.

II. COMMENTS

A. Channel Assignment and Service Areas

1. Spectrum Designated for MTA Licensing

The FCC proposes to license the "upper" 200 channels in the 800 MHz band for wide area SMR systems on a Major Trading Area ("MTA") basis. The FCC would license the "lower" 80 channels currently designated for SMR service for local systems.

PCI believes that the lower 80 channels, as well as the 150 channels currently designated for General Category use, should be available for SMR systems on a local basis. These channels could be used by local licensees, existing wide area systems, or combined to make future wide area systems. However, the rules governing these channels would remain as they are today (with greater protection for co-channel licensees). These channels would not, therefore, be authorized for use throughout an

MTA, unless they were actually licensed and constructed at sites throughout the MTA. There would be no automatic protection for these sites throughout an MTA. This approach would permit local licensees to expand their operations, and permit them to form wide area systems in the future, if market demand requires.

2. Size of MTA Spectrum Blocks and Spectrum Aggregation Limit

The Commission proposes to divide the upper 10 MHz of 800 MHz SMR spectrum into four blocks of 2.5 MHz each, corresponding to 50 channels per block. The Commission rejected the Nextel proposal that the 10 MHz block be licensed to a single provider. However, the Commission would permit applicants to bid on multiple blocks within an MTA.

PCI agrees with virtually all elements of the Commission's proposal. 10 MHz is not the minimum amount of spectrum necessary to compete with other forms of mobile communications. Nextel's business plans may call for its use of that quantity of spectrum. However, Nextel's business plans and anticipated technology should not dictate the efficient use of scarce resources or hamper the Commission's goals to permit as much competition as possible in the provision of wireless services.

PCI proposes that no more than 7.5 MHz of spectrum, of the 10 MHz available for MTA based licensing, be initially controlled by one entity. This would provide at least two MTA based licensees in each market. A licensee controlling 2.5 MHz of spectrum in a market can still provide a robust niche service in that market, competing with the licensee holding 7.5 MHz of spectrum. To the extent that the MTA based licensee found that it required the use of additional spectrum, it could employ channels

from the lower 80 SMR and the 150 General Category, under the rules appropriate for their use. Moreover, PCI would not object to elimination of the prohibition against aggregation of all 10 MHz of the upper 200 channels after five years, if the Commission found that having one entity control all 10 MHz was in the public interest.

PCI recognizes that the proposal to limit licensees initially to holding only three of the four MTA based licensees is potentially inconsistent with the spectrum aggregation limits adopted by the Commission in the Third Report and Order. Those spectrum aggregation limits are designed, however, to restrict a licensee from controlling too much wireless communications spectrum in a marketplace. The SMR industry is mature. PCI's suggestion is not based upon a desire to limit spectrum aggregation. Rather, it is a recognition that existing licensees should be provided with an opportunity to offer existing SMR services on an MTA basis. As the Department of Justice ("DOJ") recently determined[3], traditional SMR service is a distinct product market. Most wide area systems are expected to offer mobile telephone like services, in competition with PCS and cellular operators, which comprise a different product market. Accordingly, there will be a diminution in the amount of traditional SMR service available, if all MTA based licenses are available to a single entity which will certainly provide mobile telephone like services. PCI's plan will permit the continuation of existing SMR services on a niche market basis.[4]

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[3] U.S. V. Motorola, Inc. & Nextel Communications, Inc.: Proposed Final Judgment and Competitive Impact Statement, 59 FR 55705 (1994).

[4] PCI would not necessarily prohibit the provision of mobile telephone service on the remaining 2.5 MHz channel block. However, the prohibition against aggregation of all of the 10 MHz of upper 800 MHz spectrum will at least provide the opportunity for the provision of traditional SMR services.

3. Licensing of Non-Contiguous Local Channels

The Commission proposes to continue licensing SMR systems on the lower 80 channels on a local basis in order to provide opportunities for SMR operators who seek to provide local, as opposed to MTA based, service. The Commission requests comments on two alternative proposals to local SMR licensing. Under the first, it would continue to license these channels based upon the same geographic separation and channelization criteria that exist in the current regulations. The second alternative approach would be to offer licenses for individual channels or small channel blocks covering defined geographic areas.

PCI strongly supports the continuation of site specific licensing for all local channels-both the current lower 80 SMR channels as well as the 150 General Category channels that PCI believes should be available for SMR use. A site specific approach today is the only logical method by which these channels can be licensed, based upon the existing crowded landscape. If these channels are to be truly local in nature, it should up to an operator to decide how much coverage (i.e., where its tower should be located) it should provide, rather than for artificial Basic Trading Area ("BTA") or other boundaries to determine its coverage area.

The Commission believes that area specific licensing offers administrative advantages. These administrative advantages should not outweigh the best means by which service can be offered to the public. Because local SMR service will be, definitionally, local, the public will be best served by an operator constructing its transmitting facilities where it perceives customer demand, not to satisfy coverage

requirements dictated by the Commission. Moreover, the Commission's identified administrative advantages are based upon the FCC's desire to auction the local SMR channels. That decision to auction the channels is based upon the erroneous decision in the Third Report and Order that local SMR service is substantially similar to other forms of mobile communications, and thereby requires similar regulatory treatment. However, as noted above, the DOJ has found that traditional local SMR service is a distinct product market. Accordingly, it is inappropriate to conduct auctions to license local SMR channels. Absent the auction mechanism, which is inappropriate for local SMR systems, area based licensing is substantially less attractive from an administrative standpoint.

Should the Commission nevertheless proceed with area specific licensing, PCI urges that this approach be limited to areas where there is currently no use of the spectrum to be licensed. Because of the existing crowded spectrum environment, it makes little sense to license local systems, where in a particular market, there may be one or more licensees already providing local service.[5]

Because the Company urges the use of site specific licenses, the Commission should take the opportunity of this proceeding to strengthen the co-channel interference criteria. A minimum of a 40/22 dBu co-channel separation criteria should be observed in virtually every context. To deprive SMR operators of the ability to serve customers within their anticipated coverage area is to make the provision of SMR service less

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[5] Although the Commission recommends the use of BTAs for local licensing, PCI believes that the geographic areas specified by the Bureau of Economic Analysis ("BEA") may be more appropriate for this purpose. See 59 Fed. Reg. 55416 (November 7, 1994).

financially feasible. As discussed more fully below, systems that do not conform to at least the 40/22 dBu interference criteria ("short spaced systems") have prevented legitimate operators from moving transmitter facilities for a variety of sound business reasons. A stringent co-channel separation standard will make it less likely that competing systems will "lock in" co-channel licensees to existing sites.

The Commission notes that its plan to license the lower 80 SMR channels and the General Category channels on a local basis would not preclude MTA based licensees from securing the use of these channels for wide area systems. However, the Commission would restrict the use of these channels, based upon the rules that would otherwise be applicable to local systems. PCI strongly agrees with this plan. This approach would permit aggregation of local channels, over time, by entities wishing to offer wide area service, while, in the interim, preserve channels for growth of truly local systems.

4. Licensing in Mexican and Canadian Border Areas

The Commission points out that there are special considerations regarding the licensing of SMR channels in border areas. Accordingly, it proposes to license MTA blocks on a uniform basis without distinguishing border from non-border areas. Because the Company offers service in Mexican border areas, it is familiar with the unique concerns associated with licensing these systems. PCI agrees with the FCC's approach.

B. Rights and Obligations of MTA Licensees

1. Operational Flexibility

The Commission proposes that MTA based licensees would receive the ability to construct stations at any available site and on any available channel within their MTA. MTA licensees would also be able to "self-coordinate" systems within their service areas. In addition, the MTA based licensee would automatically be licensed for areas covered by a former licensee that lost its authorization based upon a violation of the Commission's rules. Any proposed assignments from a co-channel licensee to the MTA licensee would presumptively be found to be in the public interest.

PCI does not object to the "bundle" of rights that MTA licensees would receive. However, the establishment of those rights must not come at the expense of incumbent licensees. Incumbent licensees should not, as addressed more completely below, be required to relocate to alternative channels to accommodate MTA based licensees. Moreover, incumbent licensees should be permitted to assign their authorizations to whomever they choose (within the Commission's guidelines) and continue to operate as they do today, without an obligation to deal with the MTA licensee.

2. Treatment of Incumbent Systems

The Commission concludes that incumbent SMR systems should not be subject to mandatory relocation to new frequencies pursuant to Nextel's "band-clearing" approach. Instead, the Commission would allow MTA licensees the same rights they have today: to negotiate relocation, frequency swaps, mergers, purchases, or other

arrangements on a voluntary basis. Nevertheless, the Commission seeks additional comments on the mandatory relocation option.

PCI strongly objects to mandatory relocation. Relocation should only occur on the terms and conditions mutually agreeable to the incumbent and MTA licensees. There is no adequate policy basis for mandatory relocation. While in other instances[6] the Commission has imposed mandatory relocation on existing licensees, those actions were undertaken to create a new service. In this instance, as noted above, wide area SMR systems already exist. Indeed, PCI has applied, under the established waiver standard, to offer wide area SMR services in several discrete markets. It is unnecessary to expend the significant social and financial resources of spectrum relocation in order to offer a new service, particularly because the proponents of mandatory migration can achieve on a voluntary basis many of the same goals they seek without disrupting existing services. The only demonstrated benefit to mandatory relocation is the creation of a contiguous spectrum block. However, that benefit is based entirely on the use of a particular technology. It is patently unfair and against the public interest to require disruption to services in existence merely to favor a particular technological platform, when the same service can be offered without such disruption.

Because the Commission recommends against mandatory relocation, it must address the ability of incumbent licensees to relocate existing systems. PCI generally suggests that incumbent licensees be permitted to relocate their facilities if they observe the 4/22 dBu co-channel separation criteria. To restrict licensees to their existing

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[6] See e.g., Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd. 1943 (1994).

facilities would make them hostages to site owners. While PCI recommends a 40/22 dBu co-channel separation standard in general, that separation could be reduced in favor of a local licensee within the coverage area of an MTA system, unless the MTA licensee had already constructed co-channel facilities at a particular site. The MTA licensee, like any other co-channel licensee, would be required to observe the 40/22 dBu co-channel separation requirement as it applied to the local licensee.

3. Co-Channel Interference Protection

With respect to incumbent SMR systems, the Commission asks whether applying the existing co-channel separation requirements should hamper MTA based licensees, by requiring too much protection to local licensees. Conversely, the Commission asks if it should protect existing licensees within a particular coverage area.

As noted above, MTA licensees should be required to observe at least the 4/22 dBu co-channel separation criteria with respect to incumbent co-channel licensees. Likewise, local licensees should be prohibited from locating their sites within the same coverage contour. However, incumbent licensees should be able to move within their service area, if not otherwise blocked by another local licensee or a constructed MTA channel. This will protect local licensees from being blocked in by the MTA licensee. It is unlikely that there would similarly be local licensees on all sides of an incumbent licensee.

4. Emission Masks

The Commission proposes to apply out of band emission rules only to the "outer" channels included in a MTA license and to spectrum adjacent to interior

channels used by incumbents. While PCI agrees with the Commission's proposal in concept, the FCC must recognize that without mandatory relocation, as the Commission correctly proposes, many channels will be used by incumbents in the interior of the MTA system. Accordingly, the rules should adequately protect these interior co-channel users.

C. Construction Requirements

The Commission seeks comment on whether strict enforcement of a one year construction period will be an adequate protection against spectrum warehousing on frequencies occupied by local SMR systems. PCI agrees that the Commission should strictly enforce the one year construction deadline, as well as the requirement for licensees to begin serving customers by the end of their construction period. Nevertheless, PCI believes that licensees should be able to aggregate local SMR systems. However, the Commission's regulations that permit licensees to obtain additional channels once they construct their initially authorized frequencies will promote this ability and guard against spectrum warehousing.

Under the Commission's proposal, MTA licensees would be required to construct their systems within five years. MTA licensees would be given three years to provide coverage to one third of the population within their coverage area. By the end of the license term, the FCC would require service to two thirds of the population. Coverage requirements would exist, even if there were incumbents preventing the MTA licensee from fully using its channels.

The MTA licensee should be held to strict construction requirements. PCI agrees with the Commission's proposal to impose license forfeiture on MTA licensees that fail to comply with construction requirements. The MTA licensee has the ability to foreclose the use of the spectrum by other parties in a geographic area. The Commission notes that some existing wide area SMR licensees have been granted an extended implementation period of up to five years pursuant to either a waiver of the rules or Section 90.629 of the regulations. These entities, if not the MTA licensees, should still be monitored carefully to determine if they continue to meet their construction schedule. If they fail to meet the schedule authorized, they should lose their authorization for all unbuilt facilities. At that point, their rights would be no different than any other local licensee. Even if they successfully complete their construction, they should abide by the terms of their authorization and waiver, and receive none of the benefits of an MTA licensee.

The Commission notes that an MTA licensee must satisfy its coverage requirements regardless of the presence of incumbent licensees within its MTA block. An MTA licensee could therefore be blocked by a current consolidator, if the MTA licensee is not the consolidator. This problem will be particularly acute in areas such as those served by the Company -- large MTAs which cover rural areas. In those circumstances, a consolidator that has focused on acquiring channels in an urban center could block an MTA licensee who could still provide service in the remainder of an MTA. Accordingly, MTA licensees should be able to satisfy the coverage requirements by building out a system covering either 75% of the population or 75% of the

geographic area. This will permit MTA licensees covering large rural areas to satisfy coverage requirements, even if they are unable to secure the use of the channels in the core urban area. This result is in the public interest because the core urban area will presumably still be served by the incumbent licensee, while the rural area will be covered by the MTA licensee. While many potential MTA licensees might find this situation unattractive, the anticipated value of the MTA license, absent the urban center will simply manifest itself in the bidding for the authorization.

D. SMRs on General Category Channels & Inter-Category Sharing

The Commission proposes to revise the eligibility rules for General Category and Pool channels so that SMR and non-SMR applicants cannot apply for the same channels in the future. The Commission proposes accomplishing this goal in one of three ways: 1) by eliminating SMR eligibility on General Category and Pool channels; 2) by eliminating SMR sharing on Pool channels, but designating a portion of the General Category channels for SMR use; or 3) by designating the entire General Category for SMR use.

As an initial matter, PCI believes that the Commission's premise for wishing to revise its eligibility rules is flawed. The Commission believes that channels for local SMR systems would be auctionable, while channels available for other services would not be. As noted above, the Commission erroneously decided that local SMR systems were substantially similar to other forms of mobile communications services, and therefore should be subject to similar rules. In fact, local SMR service is a distinct

product market, and should be subject to different rules, including non-applicability of auction requirements.

However, to the extent that the Commission addresses the eligibility requirements for General Category and Pool channels, it should designate all 230 channels (the 80 lower SMR channels as well as the 150 General Category) for SMR use. These channels have been available for many years. The SMR service is plainly expanding to meet the needs of many entities, as the Commission envisioned when it created the service. Without access to all 230 non-MTA channels, local licensees will be foreclosed from either offering service in the first place, or expanding their systems.

Similarly, the Commission should not necessarily foreclose local SMR licensees from using Pool channels to expand operating systems. These operating systems are serving customers that might otherwise employ the Pool channels. To the extent that the Pool channels remain unused, it is logical that local SMR licensees be permitted to access the spectrum, to provide the communications services to the very entities for whom the channels were originally designated.

E. Licensing Mechanism for 800 MHz SMR Service

1. Application Procedures

The Commission proposes that both existing licensees and new applicants be eligible for MTA and local licenses. It would use procedures for MTA licensing similar to that adopted for PCS systems. PCI agrees with this approach, subject to the protection of incumbent licensees.

For local licenses, the Commission asks whether it should use site specific or geographic based licensing. If it uses geographic based licensing, the FCC would use application procedures similar to those that it would employ for MTA licenses. If it licensed local channels on a site specific basis, it would use the application procedures it employs for non-cellular Part 22 licenses.

As noted above, PCI believes that the FCC should license local SMR systems on a site specific, rather than geographic basis. It should also structure the regulations so that most applications for modification to existing facilities are not subject to petitions to deny or competitive applications if they do not affect a station's coverage area. Accordingly, applications proposing a transmitter relocation of only 1.2 miles (2 km) should not necessarily be considered an initial application. In this fashion, the Commission would be able to limit the number of instances in which it subjects existing facilities to classification as an initial application, and thereby invites competing applications within a thirty day period. Limitation of these circumstances is in the public interest because the submission of applications that may be competitive with an existing operator may only serve to curtail a licensee's service to the public. Applications for new channels could be subject to competitive applications filed within thirty days.

2. Regulatory Classification of Licensees

The FCC would presumptively classify all MTA based licensees as commercial mobile radio service ("CMRS") providers. It asks whether the same presumption should apply to licensees authorized for the lower 80 channels. As noted above, PCI

believes the FCC erroneously characterized all SMR providers as substantially similar in the Third Report and Order. Accordingly, there should be no presumption that CMRS status attaches to the lower 80 (or the 150 General Category) channels. By removing local SMR channels from CMRS classification, the Commission would eliminate the need to conduct autions to license this spectrum.

Auctioning local SMR channels is not in the public interest and is a perversion of Congressional intent. Congress intended to provide small businesses, women, minorities and other designated entities with an opportunity to participate in the wireless communications marketplace when it adopted laws authorizing the use of auctions. However, local SMR systems today are characteristically operated by small businesses, because of the relatively low cost of constructing and operating local SMR systems. Requiring current licensees to bid for additional spectrum to expand their operations will make it less likely that these entities will be able to continue to participate meaningfully in the local SMR marketplace. Accordingly, the Commission should relieve local SMR licensees of the classification of CMRS status and the attendant necessity to bid on additional spectrum to operate their facilities.

F. Competitive Bidding Issues

1. Competitive Bidding Design

The Commission proposes the use of simultaneous multiple round bidding for MTA licenses. For local licenses, the FCC proposes single round sealed bid auctions. As noted above, PCI disagrees with the requirement to auction local SMR channels,

because of the Commission's flawed logic that local SMR systems are substantially similar to other mobile communications services.

2. Procedural, Payment and Penalty Issues

The Commission inquires what the appropriate upfront payment should be for bidders. In the past, it used a formula of $0.02 per pop per MHz. In this instance, the usual rule should not apply. As the Company pointed out above, the winning bidder will likely be required to negotiate with many incumbent licensees. Accordingly, the value of the spectrum will not be the same as it has been in other services. Accordingly, the Company recommends an upfront payment of $0.002 per pop per MHz. PCI otherwise agrees with the Commission's proposals concerning down payments, bid withdrawals, default and disqualification rules for 800 MHz licenses.

3. Regulatory Safeguards

PCI agrees with the Commission's proposal that applicants transferring their licenses within three years after the initial authorization be required to file, together with their transfer application, associated contracts for sale and other transactional documents. These requirements will help prevent the submission of speculative applications. Similarly, the Company agrees with the proposal that applicants identify all parties with whom they have entered into agreements. This requirement will assist the Commission in identifying any real party in interest concerns.

4. Treatment of Designated Entities

PCI does not object to the proposed special provisions for small business, women and minorities with regard to MTA based licensing. However, it does not believe that

the record supports special treatment for rural telephone companies. As the Commission notes, there are only modest costs associated with constructing SMR systems, particularly compared with the construction of local telephone plant. Even if rural telephone companies are permitted to obtain SMR licenses, they should not enjoy any preferences in bidding for MTA licenses.

PCI also does not object to the use of installment payments and reduced upfront payments to encourage the participation of designated entities in an MTA license auction. However, because the Company objects to auctioning local SMR channels, it does not believe it appropriate to establish an "entrepreneur's block" within the lower 80 channels for separate bidding. With the limitations that the Company recommends be imposed on these channels, it is likely that they will continue to be used, as they are today, by small businesses. It is unnecessary, therefore, for the Commission to superimpose a preference structure on spectrum that is already being employed, and can continue to be employed by the very entities that the Commission wishes to encourage to use the channels.

III. CONCLUSIONS

All General Category and the "lower 80" SMR channels should be designated for SMR use. The rules governing these channels should remain as they are today. The establishment of rights for MTA based licensees should not come at the expense of incumbent SMR licensees. Finally, there should be no presumption that all SMR providers are CMRS providers. SMR services are not substantially similar to other

CMRS services and should not be subject to the same regulatory scheme as CMRS providers.

WHEREFORE, THE PREMISES CONSIDERED, Pittencrieff Communications, Inc. hereby submits its Comments in the foregoing proceeding and urges the FCC to act in a fashion consistent with the views expressed herein.

Respectfully submitted

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